ISSUE DATE: August 16, 1995

DOCKET NO. G, E-002/AI-94-729

ORDER APPROVING SETTLEMENT

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Joel Jacobs	Commissioner
Marshall Johnson	Commissioner
Dee Knaak	Commissioner

In the Matter of a Request by Northern States Power Company for the Approval of Affiliated-Interest Transactions Between NSP-Gas Utility and NSP Generation

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PROCEDURAL HISTORY

On August 8, 1994, Northern States Power Company (NSP or the Company) filed its request for an accounting order approving a gas sales agreement between NSP Generation and NSP Gas.

On October 20, 1994, NSP submitted a supplement to the original application

On December 16, 1994, the Minnesota Department of Pubic Service (the Department) filed its comments and recommendations.

On December 22, 1994, NSP responded to the Department's comments.

On April 18, 1995, NSP filed a response to Commission Staff's request for clarification of what is considered proprietary material.

On June 8, 1995, the Commission met to hear oral argument from NSP and the Department. In the course of the proceeding, NSP offered to attempt to arrive at a settlement of the issues identified by the Commission. In response to this offer, the Commission tabled the matter for 20 days.

On June 28, 1995, NSP filed a Joint NSP/Department Proposed Settlement.

On August 3, 1995, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

A. The Agreement Between NSP Gas and NSP Generation

NSP Generation, a business unit of NSP and a regulated jurisdictional utility within Minnesota, installed two 105 MW natural gas fired combustion turbines at the Angus Anson generating plant at Sioux Falls. When Northern Natural Gas constructed a new town border station southeast of Sioux Falls, NSP Generation installed a 13-mile gas pipeline to connect the Anson plant to Northern's new town border station.

NSP Generation entered an Agreement to purchase gas to fuel the turbines from NSP Gas, which had proposed the lowest total evaluated fuel cost out of 6 bidders. Like NSP Generation, NSP Gas is a business unit of NSP and a regulated jurisdictional utility within Minnesota. Under terms of the Agreement, NSP Gas will provide services (supply management services, daily nominations, scheduling, and imbalance reconciliation) as well as gas to NSP Generation. NSP Generation will pay NSP Gas a commodity price based on an indexed commodity cost of gas, Northern's transportation rate, and supply management fees. The actual price paid will vary with the market.

The Agreement is an umbrella agreement, designed to apply to a series of transactions. The initial term was August 1, 1994 to April 30, 1995, with an evergreen clause providing for the automatic extension of the Agreement for a period of up to 12 months beyond the end of the initial Agreement period, April 30, 1995. During the extended period, the Agreement can be terminated by either party upon 30 days notice.

B. NSP's Original Proposal

On August 8, 1994, NSP filed a request for an accounting Order approving the gas sales Agreement between NSP Gas and NSP Generation.

C. NSP's Revised Proposal

Subsequent to certain discovery by the Department, the Company filed (October 20, 1994) a supplement which revised the Company's proposal. In its revised proposal, NSP requested the following:

1. a declaratory Order from the Commission stating whether or not the Agreement is an affiliated-interest transaction under the 1993 amendments to Minn. Stat § 216B.48 (1994);

2. a declaratory Order from the Commission stating whether or not a variance must be requested and granted if the affiliated-interest agreement is filed before the proposed effective date, and the effective date precedes the Commission's Order date;

3. Commission approval of a variance from Minn. Rules, Part 7825.2100 to allow an

umbrella agreement if the Commission finds that the Agreement is an affiliated-interest agreement;

4. Commission approval of a variance from Minn. Rules, Part 7825.2100 to allow an umbrella agreement if the Commission finds that the Agreement is an affiliated-interest transaction;

5. Commission approval for recovery through the NSP Electric's fuel adjustment clause (FAC) of the delivered cost of gas purchased from NSP Gas for NSP Electric to provide electric service; and

6. Commission approval for credits to NSP gas' purchased gas adjustment (PGA) of certain costs and revenues from the Agreement.

D. The Department's Comments

The Department recommended that the affiliated interest agreement be approved with modifications and the addition of reporting requirements.

The Department summarized its position as follows:

- Any service provided to NSP Generation by NSP Gas should be either at the appropriate NSP Gas tariff or on a completely unregulated basis through agency services (including service already rendered). The risks should reside with the shareholders; gas rates should not be harmed in any way.

- To protect gas ratepayers, the Company should be required to report the amount of gas supplied under this agreement and the gas costs, pipeline costs, and revenues associated with this service in its 1995 true-up. Costs should be determined using the Commission's Order in G,E-999/CI-90-1008 (fully-allocated costing).

- Because NSP Generation has operated with the best information at hand on behalf of its ratepayers, there should be no increase in rates for NSP Electric customers to account for any NSP Gas undercharges for service to NSP Generation.

E. Outline of Commission-Identified Issues Regarding NSP's Revised Proposal

During its deliberations regarding this matter on June 8, 1995, the Commission identified ten issues that it sought to resolve in this matter:

1. whether or not the agreement between NSP Generation and NSP Gas is an affiliated interest within the meaning of Minn. Stat. 216B.48 (1994);

2. whether NSP should be required to maintain data on NSP Gas' costs of providing service in future rate cases pursuant to Minn. Rules, Part 7825.2300;

3. whether NSP should be granted a variance from the requirements of Minn. Rules, Part 7825.2100 for timeliness of its filing;

4. whether NSP should be granted a variance from the requirements of Minn. Rules, Part 7825.2100 to allow an umbrella arrangement for a one year or indefinite period;

5. whether NSP's proposal to include costs in fuel adjustment clause, subject to usual review standards should be approved;

6. whether the current agreement should be an evergreen agreement (renewing automatically an additional 12 months unless terminated by either party) or whether new bids should be sought for
gas supplies beginning after the end of the initial term (April 30, 1995);

7. whether the Agreement should be modified as recommended by the Department to address the potential for cross subsidy: specifically, whether the service should be provided according to appropriate NSP Gas tariffed rates or (in the alternative) whether the entire transaction should be treated as unregulated;

8. whether, as recommended by the Department, specific gas quantities, costs, pipeline value, and non-gas costs should be included with the 1995 PGA true-up;

9. whether NSP should be granted a variance from the requirement of Minn. Rules, Part 7825.2200, B (5) that it supply bid information details in its filing; and

10. whether the Commission should find, pursuant to Minn. Stat. § 216B.48, subd. 3 (1994) that it is reasonable to approve the transaction without NSP having filed detailed cost information.

At the June 8, 1995 hearing, NSP offered to negotiate with the Department regarding these items and prepare a Settlement offer, if possible.

F. The Joint NSP/Department Proposed Settlement

On June 28, 1995, NSP and the Department submitted a Proposed Settlement which addressed the ten issues identified by the Commission at the June 8, 1995 meeting. A copy of the Proposed Settlement is attached to this Order.

G. Commission Analysis of the Proposed Settlement

The Commission reviews proposed settlements to determine whether they are supported by substantial evidence and are in the public interest. The parties' agreement on the ten points identified by the Commission are analyzed as follows:

1. Affiliated Interest

On this threshold issue, the parties agreed for purposes of resolving this proceeding that the Agreement between NSP Gas and NSP Generation will be treated as an affiliated interest agreement within the meaning of Minn. Stat. § 216B.48 (1994). The parties further agreed that settlement on that issue should establish no principles for future applications. NSP reserved the right to challenge the applicability of Minn. Stat. § 216B.48 (1994) to other transactions between NSP business units in future proceedings.

The Commission finds that there is adequate information in the record to support a finding that NSP-Gas' agreement with NSP Generation is an affiliated interest agreement within the meaning of the statute. At the same time, the Commission finds that resolution of this issue on a strictly for-this-docket basis is acceptable. Future transactions between NSP business units may be scrutinized on a case-by case basis without prejudicing the Commission's oversight responsibility.

2. Data on Service Costs

The parties agreed that NSP-Gas will maintain data on its costs of providing service pursuant to Minn. Rules, Part 7825.2300 in a manner readily available upon request. This was the Department's recommendation at the June 8, 1995 hearing. This agreement facilitates the monitoring of the transaction, thereby promoting the public interest.

3. Variance re: Timeliness of Filing

The parties agreed for purposes of this Settlement that a variance from Minn. Rules, Part 7825.2100 is necessary and should be granted. The parties explained that granting the variance will allow the Commission to consider and approve the Agreement's terms.

The Commission finds that this disposition is acceptable. The Commission has analyzed the facts of this case and found that the record supports a finding that the three criteria for granting a variance established in Minn. Rules, Part 7825.3200 are present. The parties stated that this settlement establishes no precedent regarding whether a similar variance is necessary in future affiliated interest agreement filings.

The Commission affirms the parties' statement. A settlement neither adds to nor detracts from the plain meaning of the rule language and any precedents that the Commission has established.. The Company's future transactions will be assessed accordingly.

4. Variance to Allow an Umbrella Agreement

In Item # 4 of the Settlement, the parties agreed that if the Commission believed a variance from Rule 7825.2100 was required, it should be granted. At the August 3, 1995 hearing on this matter, the Commission indicated an interest in deleting this item from the Settlement. The parties stated that they would not view the deletion of Item #4 as constituting a substantial modification of the Settlement and, hence, cause to abandon the Settlement.

5. NSP Electric Fuel Clause

The Settlement confirmed the parties' approval of NSP's proposal to include costs **[of what?]** in the fuel adjustment clause. This issue was never contested by the parties. The Commission finds no concerns with this disposition.

6. Anti-Cross Subsidization Provision: Further Competitive Bidding

The parties agreed that NSP Generation will conduct a rebid process for gas supplies to the plant for the 1996 MAPP Summer Season starting May 1, 1996. This date for the rebidding had been proposed by the Company, while the Department had sought an earlier re-bid date, May 1, 1995.

The Commission approves this Settlement provision. Rebidding is a reasonable measure to minimize the potential for cross-subsidization. The Company's later re-bid date has merit and is acceptable. As noted by the Company, the later date (after the 1995 MAPP summer Season) will allow the Company to use the experience to better structure an RFP.

7. Assurance of No Harm to Gas Ratepayers

The parties agreed that NSP would be allowed to include in the annual PGA true-up delivered gas costs and gas revenues from sales to NSP Generation under the Agreement *only if* annual gas revenues less annual gas costs (calculated at WACOG) are more than (i.e. " not less than") \$0. It was also agreed that NSP-Gas would be obligated to show ("must show") in its annual PGA true-up how it calculates this credit and that non-gas revenues and costs would be reviewed in NSP-Gas' next general rate case. The parties explained that the purpose of this provision was to ensure that NSP-Gas ratepayers are, *at a minimum*, not harmed by transactions under this Agreement.

The Commission finds that this provision is a strong support for the acceptability of the Settlement. Further reassurance rests in the fact that in Docket No. G-002/M-94-103, the Commission has ordered that the ratemaking treatment of non-gas costs and revenues for non-traditional gas supply services will be reviewed in detail in the next NSP Gas general rate case. See ORDER GRANTING IN PART AND DENYING IN PART A PETITION FOR

PARTIAL RECONSIDERATION OR CLARIFICATION (June 26, 1995) at pages 8 and 10.

8. Reporting in the True-up

The parties agreed that NSP would be required to report the volume of gas, gas costs, and gas revenues for service under the Agreement in the 1995 and 1996 PGA true-up reports. NSP Gas also agreed to report the value of the pipeline capacity used to serve NSP Generation, using the data for the quarterly compliance reports ordered in Docket No. G-002/M-94-103. The parties further agreed to work together to develop an appropriate reporting format.

The Commission finds that receiving this information in the 1995 and 1996 PGA true-up reports will provide valuable assistance in monitoring the transaction in the public interest.

9. Variance to Permit On-Site Review of Bid Proposals

Minn. Rules, Part 7825.2200, subp. B(5) (a) requires that a utility seeking approval of an affiliated interest transaction file with the Commission copies of any bid proposals received in connection with the transaction.

In its original comments, the Department noted that NSP did not include these items with its filing. The Department stated, however, that it would be adequate for the Company to maintain complete information available for review at the Company's office. In their Proposed Settlement, the parties agreed that the Company should be granted a variance to allow such a review in lieu of filing the materials with the Commission.

The Commission finds that there is adequate support in the record for granting the variance. The three conditions for granting a variance set out in Minn. Rules, Part 7829.3200 are met.

10. Variance to Permit On-Site Review of Cost Information

Minn. Stat. § 216B.48, subd. 3 (1994) authorizes the Commission to approve affiliated interest contracts or arrangements without the submission of cost records "where reasonable." In this case, NSP did not and has not filed cost records.

In their Proposed Settlement, the parties agreed that the Commission could and should find it reasonable to approve the contract without the cost information. In the circumstances of this case, the Commission finds it reasonable to do so. No cost records existed at the time the Agreement was executed and filed. However, NSP has agreed to provide after the fact cost information in the PGA true-up report.

G. Commission Action

Based on its review of this entire proceeding and the record established therein, the Commission finds that the Proposed Settlement is supported by substantial record evidence and will serve the public interest. Accordingly, the Commission will approve it, grant the variances that it calls for, and direct its implementation.

The Commission clarifies that while its approval of the Proposed Settlement resolves the issues raised in this matter, no accounting principle, legal principle, or ratemaking principle is adopted or established thereby.

ORDER

1. The Joint NSP/Department Proposed Settlement of Decision Alternatives (the Proposed Settlement) is approved as modified herein, i.e. with the deletion of Item 4 entitled "Variance for umbrella agreement." A copy of the Proposed Settlement is attached.

2. The rule variances called for in the Proposed Settlement are granted:

   a. Minn. Rules, Part 7825.2100 is varied to allow the Company to enter into the Agreement without first having obtained Commission approval to do so.

   b. Minn. Rules, Part 7825.2200, subp. B(5)(a) is varied to allow the Company to maintain its bid information available for review at its office rather than requiring it to file the information with the Commission.

3. The parties shall discharge their commitments under this Settlement:

   a. pursuant to Settlement Item #2, NSP Gas shall maintain data on its costs a of providing service

      (1) in accordance with the language of Minn. Rules, Part 7825.2300; and

      (2) readily available upon request;

   b. pursuant to Settlement Item # 5, NSP Electric shall include gas costs in its fuel adjustment clause (FAC), subject to usual review standards;

   c. pursuant to Settlement Item #6, NSP Generation shall rebid for service after 5/1/96;

d. pursuant to Settlement Item #7, NSP Gas shall

(1) include in the annual PGA true-up delivered gas costs and gas revenues from sales to NSP Generation under the Agreement only if annual gas revenues less annual gas costs (calculated at the WACOG) are $0 or more;

(2) show in its annual PGA true-up how it calculates this credit

(3) review its non-gas revenues and costs in the next NSP Gas rate case;

e. pursuant to Settlement Item # 8, NSP Gas shall

(1) report the volume of gas, gas costs and gas revenues for service under the Agreement in the 1995 and 1996 true-up reports, including a report of the value of pipeline capacity used to serve NSP Generation; and

(2) work with the Department to develop an appropriate reporting format.

f. pursuant to Settlement Item #9, NSP shall maintain the bid information, available for inspection, at its office;

g. pursuant to Settlement Item #10, NSP shall submit actual after the fact cost information in the 1995 and 1996 PGA true-up reports.

h. pursuant to Settlement Item # 8, the Department shall work with the Company to develop an appropriate reporting format for (1) the volume of gas, gas costs and gas revenues for service under the Agreement in the 1995 and 1996 true-up reports and (2) a report of the value of pipeline capacity used to serve NSP Generation.

4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)